

  
RECORDATION NO. 9453 Filed 1425

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INTERSTATE COMMERCE COMMISSION

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**AMENDMENT**

Dated as of October 1, 1979

among

**C & H RAILWAYS, LTD.,**  
as Borrower

and

**REX RAILWAYS, INC.,**  
as Manager

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**(COVERING 100 GENERAL PURPOSE BOXCARS)**

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**AMENDMENT** dated as of October 1, 1979 among C & H RAILWAYS, LTD. (the **Borrower**) and REX RAILWAYS, INC. (the **Manager**) to Management Agreement dated as of February 13, 1979 between the Borrower and the Manager (the **Management Agreement**).

**W I T N E S S E T H :**

**WHEREAS**, Twitter, Inc. (the **Vendor**), the Manager and, through an Assignment dated March 15, 1979 (the **Assignment**) from Skiva International, Inc. (Skiva), the Borrower are parties to a Conditional Sale Agreement dated as of February 13, 1979 and amended by Amendment Agreement #1 dated as of February 13, 1979 (as so amended, the **Conditional Sale Agreement**), concerning the railroad equipment described in Annex A thereto (the **Equipment or Units**, and individually, a **Unit**);

**WHEREAS**, the Manager and, through the Assignment, the Borrower are parties to the Management Agreement pursuant to which the Manager has agreed to manage and maintain the Equipment;

**WHEREAS**, the Manager and the Lenawee County Railroad Company, Inc. (the **Lessee**) have entered into an Equipment Schedule executed on October 4, 1978 by the Manager and on October 9, 1978 by the Lessee, referring to the Equipment (the **Equipment Schedule**) which amends the Lease Agreement made as of September 23, 1977 (the **Lease Agreement**) between the Manager and the Lessee, which Lease Agreement provides that the Manager enter into the Equipment Schedule as principal or agent for parties to be named in an amendment to be delivered in accordance with the provisions of the Lease Agreement;

**WHEREAS**, the Manager and Skiva delivered to the Lessee a First Amendment to Equipment Schedule (the **First Amendment**) identifying Skiva as the principal for whom the Manager acts and who owns the Equipment, and, subsequent to the Assignment, the Manager, Skiva and the Borrower delivered to the Lessee a Second Amendment to Equipment Schedule (the **Second Amendment**) identifying the Borrower as the principal for whom the Manager acts and who owns the Equipment (the Lease Agreement, the Equipment Schedule, the First Amendment and the Second Amendment constituting the **Lease**);

**WHEREAS**, The Provident Bank (**Provident**), the Vendor, the Manager, the Borrower (through the Assignment), and Rex-Noreco, Inc. (**Rex-Noreco**) are parties to a Finance Agreement dated as of February 13, 1979 (the **Finance Agreement**) for the financing of the Equipment, pursuant to which Provident provided a portion of the purchase price of the Equipment;

**WHEREAS**, Provident has acquired substantially all of the right, title and interest of the Vendor in, to and under the

Conditional Sale Agreement pursuant to an Agreement and Assignment dated as of February 13, 1979 (the Agreement and Assignment);

WHEREAS, Provident has acquired, as security for the payment and performance of the obligations of the Borrower under the Conditional Sale Agreement and the Finance Agreement, all of the right, title and interest of the Borrower, as assignee of Skiva under the Assignment, in, to and under the Lease and the Management Agreement pursuant to a Lease Agreement Assignment dated as of February 13, 1979 (the Lease Agreement Assignment) and a Management Agreement Assignment dated as of February 13, 1979 (the Management Agreement Assignment), respectively;

WHEREAS, the Borrower desires to prepay, pursuant to the provisions of Article 4 of the Conditional Sale Agreement, the Conditional Sale Indebtedness, as defined in the Conditional Sale Agreement (the Conditional Sale Indebtedness), and all other amounts owing the Provident under the Conditional Sale Agreement;

WHEREAS, Citicorp Industrial Credit, Inc. (the Lender) and the Borrower have entered into a Mortgage dated as of October 1, 1979 (the Mortgage, and unless otherwise defined herein, all terms used herein shall have the meanings assigned to them in the Mortgage) pursuant to which the Lender will lend to the Borrower, subject to the terms and conditions thereof, the amount needed to prepay the Conditional Sale Indebtedness and the Borrower, as security for such loan and the other obligations of the Borrower under the Mortgage, will grant to the Lender a security interest in and assign to the Lender its rights in, to and under the Equipment, the Lease and the Management Agreement; and

WHEREAS, the parties hereto desire to amend certain provisions of the Management Agreement to facilitate the transactions contemplated by the Mortgage and conform the Management Agreement therewith and the Manager desires to consent to the Mortgage and the transactions contemplated thereby.

NOW, THEREFORE, in consideration of the premises hereof and of other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

SECTION 1. Amendment to the Management Agreement.

(a) The Management Agreement is hereby amended <sup>effective on the Closing Date</sup> to the effect that all references therein to the "Conditional Sale Agreement" and the "Conditional Sales Agreement" shall hereafter refer to the Mortgage and the Note, including, without limitation, the reference in paragraph (a) of Section 7 of the Management Agreement to payments required to be made by the "Owner" under the "Conditional Sales Agreement", which shall refer to payments required to be made by the Borrower under the Mortgage and the Note, and the

Conditional Sale Agreement pursuant to an Agreement and Assignment dated as of February 13, 1979 (the Agreement and Assignment);

WHEREAS, Provident has acquired, as security for the payment and performance of the obligations of the Borrower under the Conditional Sale Agreement and the Finance Agreement, all of the right, title and interest of the Borrower, as assignee of Skiva under the Assignment, in, to and under the Lease and the Management Agreement pursuant to a Lease Agreement Assignment dated as of February 13, 1979 (the Lease Agreement Assignment) and a Management Agreement Assignment dated as of February 13, 1979 (the Management Agreement Assignment), respectively;

WHEREAS, the Borrower desires to prepay, pursuant to the provisions of Article 4 of the Conditional Sale Agreement, the Conditional Sale Indebtedness, as defined in the Conditional Sale Agreement (the Conditional Sale Indebtedness), and all other amounts owing the Provident under the Conditional Sale Agreement;

WHEREAS, Citicorp Industrial Credit, Inc. (the Lender) and the Borrower have entered into a Mortgage dated as of October 1, 1979 (the Mortgage, and unless otherwise defined herein, all terms used herein shall have the meanings assigned to them in the Mortgage) pursuant to which the Lender will lend to the Borrower, subject to the terms and conditions thereof, the amount needed to prepay the Conditional Sale Indebtedness and the Borrower, as security for such loan and the other obligations of the Borrower under the Mortgage, will grant to the Lender a security interest in and assign to the Lender its rights in, to and under the Equipment, the Lease and the Management Agreement; and

WHEREAS, the parties hereto desire to amend certain provisions of the Management Agreement to facilitate the transactions contemplated by the Mortgage and conform the Management Agreement therewith and the Manager desires to consent to the Mortgage and the transactions contemplated thereby.

NOW, THEREFORE, in consideration of the premises hereof and of other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

**SECTION 1. Amendment to the Management Agreement.**

(a) The Management Agreement is hereby amended to the effect that all references therein to the "Conditional Sale Agreement" and the "Conditional Sales Agreement" shall hereafter refer to the Mortgage and the Note, including, without limitation, the reference in paragraph (a) of Section 7 of the Management Agreement to payments required to be made by the "Owner" under the "Conditional Sales Agreement", which shall refer to payments required to be made by the Borrower under the Mortgage and the Note, and the

*effective on the Closing Date*

*[Signature]*

Conditional Sale Agreement pursuant to an Agreement and Assignment dated as of February 13, 1979 (the **Agreement and Assignment**);

**WHEREAS**, Provident has acquired, as security for the payment and performance of the obligations of the Borrower under the Conditional Sale Agreement and the Finance Agreement, all of the right, title and interest of the Borrower, as assignee of Skiva under the Assignment, in, to and under the Lease and the Management Agreement pursuant to a Lease Agreement Assignment dated as of February 13, 1979 (the **Lease Agreement Assignment**) and a Management Agreement Assignment dated as of February 13, 1979 (the **Management Agreement Assignment**), respectively;

**WHEREAS**, the Borrower desires to prepay, pursuant to the provisions of Article 4 of the Conditional Sale Agreement, the Conditional Sale Indebtedness, as defined in the Conditional Sale Agreement (the **Conditional Sale Indebtedness**), and all other amounts owing the Provident under the Conditional Sale Agreement;

**WHEREAS**, Citicorp Industrial Credit, Inc. (the **Lender**) and the Borrower have entered into a Mortgage dated as of October 1, 1979 (the **Mortgage**, and unless otherwise defined herein, all terms used herein shall have the meanings assigned to them in the Mortgage) pursuant to which the Lender will lend to the Borrower, subject to the terms and conditions thereof, the amount needed to prepay the Conditional Sale Indebtedness and the Borrower, as security for such loan and the other obligations of the Borrower under the Mortgage, will grant to the Lender a security interest in and assign to the Lender its rights in, to and under the Equipment, the Lease and the Management Agreement; and

**WHEREAS**, the parties hereto desire to amend certain provisions of the Management Agreement to facilitate the transactions contemplated by the Mortgage and conform the Management Agreement therewith and the Manager desires to consent to the Mortgage and the transactions contemplated thereby.

**NOW, THEREFORE**, in consideration of the premises hereof and of other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

**SECTION 1. Amendment to the Management Agreement.**

(a) The Management Agreement is hereby amended, to the effect that all references therein to the "Conditional Sale Agreement" and the "Conditional Sales Agreement" shall hereafter refer to the Mortgage and the Note, including, without limitation, the reference in paragraph (a) of Section 7 of the Management Agreement to payments required to be made by the "Owner" under the "Conditional Sales Agreement", which shall refer to payments required to be made by the Borrower under the Mortgage and the Note, and the

*effective the Date w/HS*  
*Chung*

reference in Section 10 of the Management Agreement to the Management Agreement and the Manager's authority and rights thereunder being subject to the Conditional Sale Agreement and the lien thereof, which shall refer to the Mortgage and the lien and security interest thereof.

(b) Except as expressly amended hereby, the Management Agreement is hereby ratified and affirmed and shall remain in full force and effect.

## **SECTION 2. Agreement of the Manager.**

The Manager agrees and covenants with the Borrower and the Lender that:

(a) **Consent to Mortgage.** The Manager hereby consents, notwithstanding any of the terms or provisions of the Lease and the Management Agreement, which may be to the contrary, to all of the terms and provisions of the Mortgage and to the transactions contemplated thereby, including, but not limited to, the prepayment by the Borrower of the Conditional Sale Indebtedness and the mortgage of and grant of a security interest to the Lender in the Collateral.

(b) **Entitlement to Benefits.** Subject to the reservations set forth in Section 4 of the Mortgage, the Lender, by virtue of the Mortgage, shall be entitled to the benefits of, and to receive and enforce performance of, all of the covenants to be performed by the Manager under the Management Agreement, as amended hereby, as though the Lender were named therein as the Owner.

(c) **No Liability.** The Lender shall not, by virtue of this Amendment, the Guaranty and Agreement, the Mortgage, including, without limitation, the assignment by the Borrower to the Lender of the Lease and the Management Agreement, as amended hereby, and all of the Borrower's rights, powers, privileges and remedies under the Lease and Management Agreement, as amended hereby, respectively, or otherwise, be or become subject to any liability or obligation under the Lease or the Management Agreement, as amended hereby.

(d) **Acknowledgment.** The Manager acknowledges that the Borrower is refinancing its monetary obligations under the Conditional Sale Agreement through the Mortgage and the Loan made thereunder.

(e) **No Modification.** The Lease and, except as expressly amended pursuant to this Amendment, the

Management Agreement shall not, without the prior written consent of the Lender, be terminated, modified or amended, nor shall any action be taken or omitted by the Manager, the taking or omission of which might result in an alteration or impairment of the Management Agreement or the Lease, or any of the rights created thereunder except upon the prior written consent of the Borrower and the Lender.

(f) **Payment to Lender.** The Manager will pay or cause to be paid all moneys resulting from the ownership, management, use, lease, or operation of the Equipment due and to become due under the Lease, the Management Agreement or otherwise in respect of the Units, directly to the Lender at its address set forth in Section 28 of the Mortgage (or at such other address as may be furnished in writing to the Manager by the Lender) without any deduction, set-off, reduction, abatement, counterclaim or recoupment for any reason whatsoever, for amounts due the Manager under the Management Agreement or otherwise or amounts due any other party. Any such moneys received by the Lender shall be applied as provided in such Section 28. The provisions of this subparagraph (4) shall not prevent the Manager from asserting any claim separately against the Borrower.

(g) **Subordination.** The rights of the parties to and under the Lease and the Management Agreement shall be subordinate to and junior in rank to the rights of the Lender under the Mortgage.

(h) **Monthly Utilization Reports.** Not later than 15 days after the end of each month, the Manager shall provide to the Lender and the Borrower a report showing, in reasonable detail, the car hire rate, car hire estimate, incentive rate, incentive estimate, mileage rate, mileage estimate, total estimate and percentage off line for each Unit of Equipment for such month, as well as the Units on and off line, as reported in the O.D.S.I. Railroad Operations Data System. Such monthly reports shall be provided to the Lender in addition to the reports specified in Section 13 of the Management Agreement.

(i) **Compliance.** So long as it retains the right to manage the Equipment pursuant to the Management Agreement, as amended hereby, and as it may be from time to time amended subject to the provisions hereof and of the Mortgage, pursuant to any subsequent agreement with the Borrower or otherwise, the Manager shall comply with and agrees to be bound by all of the terms and conditions of the Mortgage, as if it were a party thereto, which relate to the maintenance or use of the Equipment or the payment to the Lender of amounts received from the Lessee,

including, but not limited to, the terms and provisions of Sections 18, 19, and 28 thereof.

(j) **Office; Place of Business.** The Manager represents and warrants that the office where it keeps its records with respect to the Lease and its chief place of business is located in the State of New Jersey. The Manager shall not change the location of the office where it keeps such records or of its chief place of business without giving prior notice to the Lender of any such change and the new location of such office or chief place of business.

### **SECTION 3. Survival of Representations and Warranties; Binding Effect.**

(a) **Survival.** All agreements, representations and warranties contained in this Amendment, the documents referred to herein and any document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith shall continue in effect following the execution and delivery of this Amendment and shall continue in effect so long as any amount owing under the terms hereof remains outstanding and unpaid.

(b) **Binding Effect.** All agreements, representations and warranties contained in this Amendment, the documents referred to herein and any document or certificate delivered pursuant hereto or thereto or in connection herewith or therewith or from time to time thereafter shall bind the party making the same and its successors and assigns and shall inure to the benefit of each party for whom made and their respective successors and assigns.

### **SECTION 4. Notices.**

All communications and notices with respect to the transactions contemplated by this Amendment shall be in writing and shall become effective when deposited in the United States mail, with proper postage for first-class mail, prepaid, addressed (a) if to the Borrower, to 1350 Broadway, New York, New York 10018, Attention: Isaac Chehebar, with a copy to the Manager at its notice address pursuant to the provisions of this Section; (b) if to the Manager, to 616 Palisade Avenue, Englewood Cliffs, New Jersey 07632; and (c) if to the Lender, to 399 Park Avenue, New York, New York 10043, Attention: Manager, Contracts Administration; or at such other address as any party hereto may from time to time designate by notice duly given in accordance with the provisions of this Section to the other parties hereto.



## **SECTION 5. Miscellaneous.**

(a) **Execution.** This Amendment may be executed in any number of counterparts and by the different parties hereto on separate counterparts, all of which, when so executed and delivered, shall constitute a single instrument, but the counterpart or counterpart set delivered to the Interstate Commerce Commission for recordation and subsequently redelivered to the Lender shall be deemed the original counterpart and all other counterparts hereof shall be deemed duplicates thereof. Although this Amendment is dated as of the date first above written for convenience, the actual dates of the execution hereof by the parties hereto are respectively the dates set forth under the signatures hereto.

(b) **Governing Law.** This Amendment shall be governed by, and be construed in accordance with, the laws of the State of New Jersey, **provided, however,** that the parties hereto and the Lender shall be entitled to all rights conferred by 49 U.S.C. §11303, such additional rights arising out of the filing, recording, registering or depositing hereof, and any rights arising out of the marking on the Units of Equipment.

(c) **Amendments, Supplements, etc.** Neither this Amendment nor any of the terms hereof may be amended, supplemented, waived or modified (herein referred to as a **change**) orally, but only by an instrument in writing signed by the party against which enforcement of such change is sought.

(d) **Headings.** The headings of the sections and paragraphs of this Amendment have been inserted for convenience of reference only and shall in no way restrict or otherwise modify any of the terms or provisions hereof.

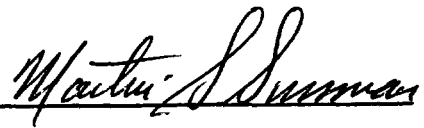
**IN WITNESS WHEREOF,** the parties hereto have caused this Amendment to be duly executed by their respective officers thereunto duly authorized as of the date set forth above.

C & H RAILWAYS, LTD.,  
as Borrower

By 

Title: V.P.

Date: 10/16/29

Attest: 

[Seal]

REX RAILWAYS, INC.,  
as Manager

By \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

[Seal]

C & H RAILWAYS, LTD.,  
as Borrower

By \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Attest: \_\_\_\_\_

[Seal]

REX RAILWAYS, INC.,  
as Manager

By Frank A. Stanton

Title: Ex V. P.

Date: 10/16/79

Attest: Doris Wilson

[Seal] Asst. Secy.

**CONSENT**

The undersigned, as Lender under the Mortgage, hereby consents to the terms and provisions of the above Amendment, including, but not limited to, the amendment of the Management Agreement effected thereby.

**CITICORP INDUSTRIAL CREDIT,  
INC.,**

as Lender

By W. H. Bergen

Title: Vice President

Date: 10/16/79

Attest: Kenneth L. Rush

[Seal]

State of New York       )  
                                  ss.:  
County of New York     )

On this 16 day of October, 1979, before me personally appeared Isaac Melikson, to me personally known, who being by me duly sworn, says that he is the Vice Pres of C&H Railways, Ltd., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Martin S. Sussman  
Notary Public

**MARTIN S. SUSSMAN**  
Notary Public, State of New York  
No. 30-4500640  
Qualified in Nassau County  
Commission Expires March 30, 1981

[Notarial Seal]

State of New Jersey     )  
                                  ss.:  
County of \_\_\_\_\_ )

On this \_\_\_\_\_ day of October, 1979, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of Rex-Railways, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

State of New York                    )  
  ss.:  
County of New York                 )

On this \_\_\_\_\_ day of October, 1979, before me personally appeared \_\_\_\_\_, to me personally known, who being by me duly sworn, says that he is the \_\_\_\_\_ of C&H Railways, Ltd., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

\_\_\_\_\_  
Notary Public

[Notarial Seal]

State of New Jersey                )  
  ss.:  
County of Berger                )

On this 16<sup>th</sup> day of October, 1979, before me personally appeared Mark A. Salitan, to me personally known, who being by me duly sworn, says that he is the Ex. Vice Pres. of Rex-Railways, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Robin Schertz  
\_\_\_\_\_  
Notary Public  
ROBIN SCHERTZ  
NOTARY PUBLIC OF NEW JERSEY  
My Commission Expires May 4, 1982

[Notarial Seal]

State of New York       )  
                                  SS.:  
County of New York     )

On this 16<sup>th</sup> day of October, 1979, before me personally appeared W. H. Bergeron, to me personally known, who being by me duly sworn, says that he is the Vice President of Citicorp Industrial Credit, Inc., that the seal affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed on behalf of said corporation by authority of its Board of Directors, and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

Patrice A. Marchese  
Notary Public

[Notarial Seal]

PATRICE A. MARCHESE  
Notary Public, State of New York  
No. 03-4696611  
Qualified in Bronx County  
Certificate filed in New York County  
Commission Expires March 30, 1981